

REPORT - PLANNING COMMISSION MEETING
February 26, 2004

Project Name and Number: Reasonable Accommodation for the Disabled (PLN2004-00126)

Applicant: City of Fremont

Proposal: To consider city-initiated zoning text amendments (ZTAs) to amend applicable sections of Title VIII [Planning and Zoning] of the Fremont Municipal Code regarding development standards provisions for the reasonable accommodation of persons with disabilities consistent with implementation of certain programs of the City's General Plan Housing Element.

Recommended Action: Recommend adoption by City Council.

Location: Citywide

Environmental Review: This project is exempt from CEQA review because the project has no potential for causing a significant effect on the environment per Section 15061(b)(3) of the Guidelines.

Public Hearing Notice: Public hearing notification is applicable. A total of 216 notices were mailed as a courtesy to interested parties. The notices were mailed on February 13, 2004. A Public Hearing Notice was delivered to The Argus on February 9, 2004 to be published by February 12, 2004.

Executive Summary: The proposal implements Program 44 (Analysis of constraints to the development of housing for persons with disabilities), and Program 45 (Addressing constraints to the development of housing for persons with disabilities) of the City's General Plan Housing Element by proposing specific zoning text amendments. Program 44 is undertaken in compliance with the State Planning and Zoning Law requirement that a housing element include the analysis referred to in Program 44. Program 45 contains measures that address the Law's requirement "to demonstrate local efforts to remove governmental constraints that hinder the locality from . . . meeting the need for housing for persons with disabilities."

Background and Previous Actions: The City is charged by State statute with responsibility for updating its Housing Element. The Housing Element is a planning document (part of the General Plan) that guides the City's housing efforts. The Element not only provides general goals, objectives and policies but also proposes implementation programs to meet the stated goals and objectives. The Element must also address its potential and actual governmental constraints to meeting the housing needs of special households, which includes disabled (physical and mental) households. Existing law also requires the State Department of Housing and Community Development (HCD) to evaluate each housing element for consistency with State Planning and Zoning Law. Those actions include the identification and removal of barriers to encourage the development of a variety of types of housing for these special needs households.

On February 12, 2002, the City Council adopted a new Housing Element to replace the previously adopted (May 1991) Element. The City received comments from the State Department of Housing and Community Development (HCD) on June 3, 2002, stating that revisions were necessary prior to State certification. Since June of 2002, staff worked to revise the Housing Element to respond to HCD comments. Council adopted the revised Housing Element on May 13, 2003. On July 17, 2003, HCD informed the City of Fremont that the Housing Element adopted by the City Council on May 13, 2003 was found in compliance with State housing element law. HCD also reiterated the need to meet the established needs for this population through approval of revisions to the Zoning Ordinance for Programs 44 and 45.

Project Description: Program 44 of the Housing Element specifically analyzes the City's zoning and land use controls to identify possible constraints to the reasonable accommodation of persons with disabilities. The analysis:

- identified specific housing projects constructed for persons with disabilities (please see Exhibit A) where certain development standards were modified pursuant to satisfactory demonstration that the residents thereof would not need, for example, the regular number of parking spaces;
- noted that often such disabled persons are housed in "special residential care facilities" as defined in the Fremont Municipal Code, with reference to the zoning districts within which such facilities are permitted; and
- discussed the City's previous efforts to address the housing needs of disabled persons through adoption in 1999 of Article 29.1 of Title VIII, Chapter 2, of the Municipal Code, the "Reasonable Accommodations Ordinance".

The analysis concluded "the only significant constraint identified during this analysis of the Reasonable Accommodations Ordinance is the requirement for a public hearing on all requests."

Program 45 then recommends that the Ordinance be amended to change certain provisions regarding the public hearing requirement and the findings necessary for assessing reasonableness of a request. In addition, it recommends that the collection of fees be eliminated.

Project Analysis: Pursuant to these recommendations, the proposed amendment:

- waives the public hearing requirement for certain proposed modifications to development standards, including: yard area encroachments for accessibility improvements or building additions that ameliorate in-home maneuverability; hardscape additions that reduce otherwise required landscape or open space areas; parking space reductions where the disability demonstrates a like reduction in persons operating vehicles; while allowing for hearings to be held when deemed necessary in the public interest;
- adds to section 8-22915, "Grounds for accommodation", a necessary finding that consistency with the Fair Housing Act be made by the Development and Environmental Services Director, or, on appeal, the City Council, as regards an application; and
- rescinds section 8-22918 which discussed fees for such requests. (In February 2003, the City Council set the fee at \$0).

Finally, Program 45 also recommends changes to the definition of "special residential care facility" to reflect that the term "disabled" is more expansive and has replaced "handicapped" as the preferred terminology.

The removal of these modest regulatory barriers contributes to the accessibility of housing opportunities for this special needs segment of the population.

General Plan Conformance: The Housing Element assessed the projected housing needs of disabled households, discussing specific built projects that address certain disability populations (as included in Exhibit A) and mentioning that "'barrier-free' housing is needed for those with mobility limitations. Because people with disabilities often have limited incomes, affordable housing that meets their particular needs is especially critical. The City has identified three specific programs to address disabled needs, especially constraints to housing for persons with disabilities. Programs #44, 45 and 46. . . address disabled issues." [Note: Program #46, Accessibility improvements to existing housing, refers to rehabilitation assistance to housing units that need modifications, is administered by the Office of Neighborhoods Housing Division, and is the subject of another implementation project.] Thus, this ZTA regarding reasonable accommodation is evidence of the City's commitment to implement the comprehensive housing strategy for the 2001-2006 time frame, and executes the following policy:

Housing Policy 5B: Continue to provide assistance to service providers of special needs households such as seniors, disabled and homeless.

Environmental Analysis: The Initial Study conducted for the project has evaluated the possibility for its causing a significant effect on the environment. Based on the evaluation, there is no evidence that the activity (e.g., the ZTA) in question may have a significant effect. Therefore, pursuant to Section 15061(b)(3), the activity is not subject to CEQA.

Response from Agencies and Organizations: None received.

Enclosures: Exhibit "A" Proposed amended Article 29.1, "Requests For Reasonable Accommodation For Persons With Disabilities" and Section 8-2185 redefinition of "Special Residential Care Facility"

Recommended Actions:

1. Hold public hearing.
2. Recommend the City Council find the initial study has evaluated the possibility for this project to cause a significant effect -- individually or cumulatively -- on the environment, that there is no such evidence, and that the proposed project is thereby exempt from CEQA per Section 15061(b)(3).
3. Find the Zoning Text Amendment is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Housing Element Chapter as discussed within the staff report.
4. Find the public necessity, convenience and general welfare require the adoption of the Zoning Text Amendment PLN2004-00126 because it furthers the achievement of Housing Element policy by enhancing housing opportunities for persons with disabilities.
5. Recommend PLN2004-00126 to the City Council in conformance with Exhibit "A" (Zoning Text Amendments).

EXHIBIT "B"
REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES
PLN2004-00126

ARTICLE 29.1 REQUESTS FOR REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES

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| § 8-22910. | Purpose. |
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| § 8-22912. | Required information. |
| § 8-22913. | Notice of public hearing on application for reasonable accommodation. |
| § 8-22913.1 | Reasonable accommodation public hearing exemptions. |
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| § 8-22916. | Action by the development and environmental services director; review by city council or planning commission; hearing on review. |
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| § 8-22919. | No accommodation for persons convicted of unlawful manufacture or distribution of controlled substances. |
| § 8-22920. | Rescission of grants of reasonable accommodation. |

Sec. 8-22910. Purpose.

It is the policy of the city to comply with the Federal Fair Housing Act by providing reasonable accommodation in the application of its zoning regulations for persons with disabilities seeking fair access to housing. The city also recognizes the importance of sustaining and enhancing residential neighborhoods. In determining whether a requested accommodation is reasonable, the city will consider, among other relevant factors, the extent to which the accommodation might be in conflict with the legitimate purposes of its existing zoning regulations, including where relevant, those regulations aimed at sustaining residential neighborhoods and preserving a suitable environment for family life. The purpose of this article is to provide a process for making and acting upon requests for reasonable accommodation.

Sec. 8-22911. Request application.

- (a) Any person who requests reasonable accommodation, based on the disability of residents, in the application of a zoning law which may be acting as a barrier to fair housing opportunities may do so on a form prescribed for that purpose by the city.
- (b) If the project for which the request is being made also requires some other planning permit or approval, then the applicant shall file the request together with the application for such permit or approval.

Sec. 8-22912. Required information.

The applicant shall provide the following information:

- (a) Applicant's name, address and telephone number;
- (b) Address of the property for which the request is being made;
- (c) The current actual use of the property;
- (d) The zoning code provision, regulation or policy from which accommodation is being requested;
- (e) The basis for the claim that the person(s) for whom accommodation is sought is [are] considered disabled under the Fair Housing Act and why the accommodation is reasonably necessary to make the specific housing available to the person(s);

(f) Such other relevant information as may be requested by the development and environmental services director or his or her designee.

Sec. 8-22913. Notice of public hearing on application for reasonable accommodation.

At least ten days prior to ~~the~~ a public hearing on an application for reasonable accommodation, as provided for in this article, notice shall be given by both of the following methods for those types of accommodations not otherwise exempted from the public hearing notice requirements pursuant to Section 8-22913.1:

- (1) By mailing notice to the applicant and to all persons, including businesses, corporations, or other public or private entities as shown on the last equalized assessment roll as owning real property within three hundred feet of the property which is the subject to the proposed reasonable accommodation. The names and addresses of such persons, businesses, corporations or entities as shown on the current tax roll records of the county assessor of Alameda County shall be used for giving notice pursuant to this section.
- (2) By publishing notice in a newspaper of general circulation printed and published in the city, not less than ten days prior to the date of public hearing.

Failure of any person, other than the applicant, to receive notice of the public hearing shall in no way affect the validity of action taken.

Sec. 8-22913.1. Reasonable accommodation public hearing exemptions.

The provisions of section 8-22913 shall not apply to requests for reasonable accommodation for the following:

- (1) Yard area encroachments for ramps, handrails, or other such accessibility improvements;
- (2) Hardscape additions, such as widened driveways, parking area or walkways that result in noncompliance with required landscaping or open space area provisions;
- (3) Building addition(s) for accessibility accommodation that result in building setback encroachments;
- (4) Reduced off-street parking where the disability clearly limits the number of persons operating vehicles;
- (5) Any other modification or exception that the development and environmental services director finds, pursuant to the requirements set forth in section 8-22915, is similar in nature, function or operation to permitted development allowed in this section.

Sec. 8-22914. Hearings by development and environmental services director on reasonable accommodation applications.

Each application for a reasonable accommodation shall be considered and acted upon by the development and environmental services director or his or her designee after a public hearing, except for those applications specified in Section 8-22913.1. At the public hearing, the applicant shall have the right to present statements, information and witnesses in support of his or her application, and any other person may be heard and may present information either in opposition or support of the application.

Sec. 8-22915. Grounds for accommodation.

In making a determination regarding the reasonableness of a requested accommodation the following factors shall be considered:

- (a) Special needs created by the disability;
- (b) Potential benefit that can be accomplished by the requested accommodation;
- (c) Potential impact on surrounding uses;
- (d) Physical attributes of and any proposed changes to the subject property and structures;
- (e) Alternatives which may provide an equivalent level of benefit;
- (f) Whether the requested accommodation would impose an undue financial or administrative burden on the city;
- (g) Whether the requested accommodation would require a substantial alteration in the nature or effect of a city program or policy;
- (h) Whether the requested accommodation would result in a concentration of uses otherwise not allowed in a residential neighborhood to the substantial detriment of the residential character of that neighborhood;
- (i) Whether the requested accommodation is consistent with the Fair Housing Act;
- ~~(j)~~ (j) Any other factor that may have a bearing on the request.

Sec. 8-22916. Action by the development and environmental services director; review by city council ~~or planning commission~~; hearing on review.

(a) For those reasonable accommodation applications as set forth in section 8-22913.1, the development and environmental services director may grant or deny such request for reasonable accommodation or may grant such request subject to specified conditions. The director's determination shall be supported by written findings and conclusions as set forth in section 8-22915. The applicant shall be notified forthwith in writing of the action taken. The determination of the development and environmental services director shall be deemed to have been made at the time of depositing in the mail written notification as hereinabove referred to, or at the time of announcement of the determination in the presence of the applicant or his or her authorized representative, and such determination is effective ten days thereafter unless within such ten days an appeal is filed or referral for city council review has been made pursuant to subsection (b). Any such appeal or referral shall suspend the action of the development and environmental services director, pending final action thereon.

(b) The determination of the development and environmental services director with respect to any application for a reasonable accommodation shall be reviewable by the city council upon referral to it by the city manager or by the city council on its own motion.

Sec. 8-22917. Appeal of director's decision.

The director's decision shall be appealable to the city council in accordance with the procedure set forth in ~~Chapter 5 of Title I of this Code~~ section 8-23011 of this chapter, except that the city council shall in ~~all such cases for which a public hearing is deemed necessary in the public interest~~ conduct a de novo hearing of the appeal therefor and notice of the appeal hearing shall be the same as that required for a public hearing by section 8-229143.

~~Sec. 8-22918. Fees.~~

~~Fees for applications for reasonable accommodations and for appeals thereon shall be established by resolution of the city council.~~

Sec. 8-22919. No accommodation for persons convicted of unlawful manufacture or distribution of controlled substances.

Persons who have been convicted of the unlawful manufacture or distribution of controlled substances shall not be allowed to reside in any residence for which a reasonable accommodation has been granted under this article.

Sec. 8-22920. Rescission of grants of reasonable accommodation.

Any grant of a reasonable accommodation made under this article may be conditioned to provide for its rescission under appropriate circumstances.

ARTICLE 1. DEFINITIONS.

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Sec. 8-2185. Residential care facilities, special.

"Special residential care facilities" shall mean any state authorized, certified or licensed family care home, foster home or group home serving six or fewer ~~mentally disordered or otherwise handicapped persons or dependent and neglected persons with disabilities~~, children or the elderly when such homes provide care on a twenty-four-hour a day basis.